

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

Chapter 11

BENEVIS CORP., *et al.*,¹

Case No. 20-33918 (MI)

Debtors.

(Jointly Administered)

**MOTION TO WITHDRAW PROOFS OF CLAIM NUMBERS 87 AND 89
THROUGH 95 WITH PREJUDICE PURSUANT TO FEDERAL RULE OF
BANKRUPTCY PROCEDURE 3006**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN TWENTY-ONE (21) DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

COME NOW nine Personal Injury Claimants (the “Personal Injury Claimants”), by counsel, pursuant to Title 11 of the United States Code (the “Bankruptcy Code”), Rule 3006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Local Rules of this Court (the “Local Rules”), and respectfully move this Court to permit these creditors to withdraw, with prejudice to re-filing, their *Proofs of Claim, Numbers 87, 89, 90, 91, 92, 93, 94*,

¹ The Debtors (the “Debtors”) in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Benevis Corp. (0242); LT Smile Corporation (2818); Benevis Holding Corp. (0222); Benevis Affiliates, LLC (7420); Benevis, LLC (5524); Benevis Informatics, LLC (7833). The address of the Debtors’ headquarters is 1090 Northchase Parkway S.E., Suite 150, Marietta, GA 30067.

and 95 (together, the “Proofs of Claim”). The Personal Injury Claimants are as follows: (1) Sidney Via; (2) E.L., a minor, by and through her father, Eric Livesay; (3) Jason Elliott; (4) K.B., a minor, by and through her mother, Mesha Brown; (5) M.H., a minor, by and through her mother, Brittany Richards; (6) Shermicia Becks; (7) A.J., a minor, by and through her mother, Shamia Johnson; and (8) D.S., a minor, by and through her mother, Shamia Johnson, or D.S. as an adult. Each of these Personal Injury Claimants filed the Proofs of Claim in the above-styled, jointly administered Chapter 11 cases (the “Bankruptcy Cases”). See Exhibit 1.

On December 3, 2020, the Debtors filed Objections to the Proofs of Claim [Doc. Nos. 491-499] (the “Claim Objections”). The Personal Injury Claimants responded to the Claim Objections on December 29, 2020 [Doc. Nos. 560-568], thereby initiating certain claim-objection proceedings (the “Claim Objection Proceedings”). The Claim Objection Proceedings remain pending.

On December 30, 2020, this Court entered the *Order Approving Combined Disclosure Statement and Joint Plan of Liquidation of Benevis Corp. and its Affiliated Debtors’ Pursuant to Chapter 11 of the Bankruptcy Code* [Doc. No. 575 (the “Confirmation Order”) in the Bankruptcy Cases, confirming, as modified therein, the *Combined Disclosure Statement and Joint Plan of Liquidation of Benevis Corp. and its Affiliated Debtors Pursuant to Chapter 11 of the Bankruptcy Code* [Doc. No. 570] (the “Plan”). The Effective Date of the Plan occurred on December 31, 2020 (the “Effective Date”).

The Benevis Liquidation Trust (the “Liquidation Trust”) was created on the Effective Date in accordance with Article V of the Plan, and Steven D. Sass, LLC was appointed as liquidation trustee of the Liquidation Trust (the “Liquidation Trustee”). Under Article V.C of the Plan, the Liquidation Trust has full authority to resolve all disputed claims filed in the

Bankruptcy Cases and, as of the Effective Date and in accordance with Article V.K of the Plan, was substituted for the Debtors as the party-in-interest in any adversary proceedings, contested matters, or other litigation to which the Debtors were then a party, including without limitation, the Claim Objection Proceedings.

As the legal basis for the relief requested in this Motion, the Personal Injury Claimants respectfully state that the claims and causes of action underlying the Proofs of Claim have now been resolved, and they no longer seek to pursue their Proofs of Claim in the Bankruptcy Cases. Federal Rule of Bankruptcy Procedure 3006 provides, in pertinent part:

A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule. If after a creditor has filed a proof of claim an objection is filed thereto... the creditor may not withdraw the claim except on order of the court after a hearing on notice to the trustee or debtor in possession, and any creditors' committee

F.R. Br. P. 3006. A motion to withdraw a claim in bankruptcy court has been analogized to a motion to withdraw a complaint, and thus the considerations underlying Federal Rule of Civil Procedure 41(a) apply to a motion to withdraw a proof of claim. *In re Varona*, 388 B.R. 705, 726 (Bankr. E.D. Va. 2008). The purpose of Rule 41(a)(2) is to allow voluntary dismissals unless the parties will be unfairly prejudiced. *Davis v. USX Corp.*, 819 F.2d 1270, 1273 (4th Cir. 1987).

The withdrawal of the Proofs of Claim with prejudice to re-filing will prejudice either the Debtors' bankruptcy estates or the Liquidation Trust. As a condition of the Release of the Proofs of Claim, the Liquidation Trust has required that the Personal Injury Claimants withdraw their Proofs of Claim in these Bankruptcy Cases with prejudice to re-filing, and the Personal Injury Claimants have agreed to do so. Accordingly, it is in the best interest of all parties for the Court

to grant this Motion and enter the order withdrawing the Proofs of Claim in substantially the form of the proposed order included with this Motion.

WHEREFORE, the eight Personal Injury Claimants (the creditors), hereby request that the Court permit them to withdraw their Proofs of Claim, numbers 87 and 88 through 95, with prejudice to re-filing and enter an order approving such withdrawal in substantially the form of the proposed order included with this Motion.

Respectfully submitted,

By: /s/ John P. Fishwick, Jr.

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CERTIFICATE OF SERVICE

I, John P. Fishwick, Jr., do hereby certify that the foregoing Motion to Withdraw Proofs of Claim Numbers 87 and 89 through 95 with Prejudice Pursuant to Federal Rule of Bankruptcy Procedure 3006 was served via electronic filing via the CM/ECF on all parties receiving electronic notice in these Bankruptcy Cases and on all other parties listed on the attached Master Service List who did not receive electronic service by regular, first class United States mail, postage prepaid.

On this 2nd day of June, 2022.

/s/John P. Fishwick, Jr.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

Chapter 11

BENEVIS CORP., *et al.*,¹

Case No. 20-33918 (MI)

Debtors.

(Jointly Administered)

**ORDER APPROVING MOTION TO WITHDRAW PROOFS OF CLAIM
NUMBERS 87 AND 89 THROUGH 95 WITH PREJUDICE PURSUANT TO FEDERAL
RULE OF BANKRUPTCY PROCEDURE 3006
(Relates to Docket No. ____)**

The Court has considered the *Motion to Withdraw Proofs of Claim Numbers 87 and 89 Through 95 With Prejudice Pursuant to Federal Rule of Bankruptcy Procedure 3006* (the “Motion”); and this Court, having considered the Motion, any objections or opposition to the Motion, the arguments of the Personal Injury Claimants² in support of the Motion, and the agreement of the Liquidation Trust to the relief requested in the Motion; the Personal Injury Claimants’ having complied in all respects with the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules; and after due and proper notice to all parties-in-interest is of the opinion that the Motion should be GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. Proof of Claim Nos. 87, 89, 90, 91, 92, 93, 94, and 95 filed by the Personal Injury Claimants in these Bankruptcy Cases are hereby deemed withdrawn in all respects and with prejudice to re-filing in these Bankruptcy Cases.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Benevis Corp. (0242); LT Smile Corporation (2818); Benevis Holding Corp. (0222); Benevis Affiliates, LLC (7420); Benevis, LLC (5524); Benevis Informatics, LLC (7833). The address of the Debtors’ headquarters is 1090 Northchase Parkway S.E., Suite 150, Marietta, GA 30067.

² All capitalized terms have the meanings assigned to them in the Motion.

2. Proof of Claim Nos. 87, 89, 90, 91, 92, 93, 94, and 95 are hereby expunged from the claims registers maintained in these Bankruptcy Cases. Omni Agent Solutions, the claims and noticing agent in these Bankruptcy Cases, is hereby directed to expunge these Proofs of Claim from the claims registries it maintains in these Bankruptcy Cases and to make all other necessary changes to evidence the relief set forth in this Order.

Dated: _____

MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

APPROVED AS TO FORM AND SUBSTANCE:

By: /s/ John P. Fishwick, Jr.
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-and-

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